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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203884
Party	Defendant Joel L. Beling d/b/a Supa Characters Pty Ltd
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Submission	Motion to Compel Discovery
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Date	07/16/2012
Attachments	Applicant's Motion to Exceed the Page Limit in his Motion to Compel.pdf (6 pages)(157768 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,372,884 (COLORWORX)
Registered January 22, 2008

Opposition No. 91203884

Ennis Inc.

v.

Joel L. Beling d/b/a Supa Characters Pty Ltd

**APPLICANT'S MOTION FOR
LEAVE TO EXCEED THE
PAGE LIMIT IN HIS
MOTION TO COMPEL
DISCOVERY RESPONSES**

Cancellation No. 92055374

Joel L. Beling d/b/a Supa Characters Pty Ltd

v.

Ennis, Inc.

**APPLICANT'S MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT IN
HIS MOTION TO COMPEL DISCOVERY RESPONSES**

To: Ennis Inc and TTAB.

Applicant, JOEL L. BELING d/b/a Supa Characters Pty Ltd ("Applicant"), pursuant to the Federal Rules of Civil Procedure, hereby files this Motion for Leave to Exceed the Page Limit in his Motion to Compel and would show the Board as follows:

1. Applicant posted his Motion to Compel Discovery Responses together with a Certificate of Mailing in Opposition No. 91203884 to the Trademark Trial and Appeal Board on July 10, 2012 through Australia Post because of technical difficulties preventing him from uploading said Motion through the Electronic System for Trademark Trial and Appeals.
2. Applicant's Motion to Compel, not including the exhibit list, certificate of service and exhibits, is 57 pages in length, 22 pages over the prescribed word limit.
3. Applicant respectfully seeks leave to exceed the page limit by 22 pages by reason of the egregious nature of Ennis Inc's willful refusal and failure to reply and cooperate with Applicant's specific, narrowly tailored, highly relevant and probative Discovery Requests and Interrogatories.
4. The following submissions are reproduced from Applicant's Motion to Compel and are relied upon in this Motion to Exceed Page Limit.
5. "On 10 May 2012, Applicant served Opposer with its First Request for Production, First Request for Admissions and First Set of Interrogatories. Apart from the documents produced in Exhibits 36 and 42, Opposer has flagrantly refused to comply with Applicant's Discovery requests (see Exhibits 2-26) and still refuses to comply. As at the date of this filing of this Motion to Compel, 28 days have elapsed, significantly prejudicing Applicant's right to a fair trial. In order to prepare for trial, which is currently set of for 21st December 2012, Applicant must have the cooperation of Opposer as Discovery is pursued. This cooperation must of necessity include the following the mandates of the Federal Rules of Civil Procedure. Opposer's cooperation is especially paramount to

Applicant because Applicant is not a resident of the United States and, being a foreign resident residing in Australia, Applicant has no access whatsoever, to any of the materials in the possession, custody and control of Opposer. Applicant has complied fully with his Discovery obligations whereas Opposer has defiantly flaunted its Discovery obligations.

6. In general, Applicant submits for each of the below Interrogatories and Requests, that Opposer has offered the identically phrased objection for all of the Interrogatories and Requests it refused and failed to answer, that is, that "Opposer objects to this Interrogatory as it is overbroad, harassing, irrelevant and not reasonably calculated to lead to the discovery of evidence admissible at trial." Applicant notes that this objection is in bad faith because it fails to particularize a single, relevant objection. In other words, this objection is a multi-pronged, catch-all, kitchen-sink objection designed to frustrate Applicant's legitimate discovery attempts. Put simply, if Opposer had a bona fide objection to a particular Interrogatory or Request, it would have stated it in plain terms, without offering a blanket multi-faceted objection which in most cases has two or more of the four objections mentioned as irrelevant and inappropriate.
7. Additionally, Applicant submits that Rule 26 of the Federal Rules of Civil Procedure provide for broad discovery. Under Rule 26(b)(1), "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." As a general matter, "relevance" for discovery purposes is broadly construed, and "information sought need not be admissible at the trial if the information sought appears reasonably calculated to

lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1); see, e.g., *Lewis v. ACB Business Services, Inc.*, 135 F.3d 389, 402 (6th Cir. 1998) ("The scope of examination permitted under Rule 26 (b) is broader than that permitted at trial."). Courts have long held that pretrial discovery is "to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case.").⁷ It is respectfully submitted that all of Applicant's Discovery Requests and questions are relevant, proper, fair, probative and narrowly tailored.

8. Furthermore, Applicant submits for each of the below Interrogatories and Requests, that Applicant's Interrogatories and Requests are not harassing because they were served on Opposer in response to Opposer's Notice of Opposition. Opposer commenced this action by filing its Notice of Opposition, presumably because it had a good faith basis for opposing the registration of the COLOR WARS mark, and now it simply refuses and fails to answer relevant questions or to disclose anything other than product samples about its company or the use of the COLORWORX mark in commerce. Furthermore, a recurring theme throughout Opposer's Discovery responses (or lack thereof) is an absolute aversion to answering any questions or disclosing any information which would support or rebut the allegation that Opposer committed fraud on the United States Patent and Trademark Office by applying for and obtaining the COLORWORX registration. If Opposer did not commit fraud on the USPTO, then the most logical course of action would be to disclose all documents and answer all

- questions in relation to alleged fraud. In contrast, Opposer has done the opposite, concealing all evidence in relation to the COLORWORX mark save and except for product samples, which demonstrates a consciousness of guilt and an intent to obstruct justice. As shown in the Exhibit List, Applicant has given Opposer numerous opportunities to comply with its Discovery obligations and Opposer has blatantly violated the Federal Rules of Civil Procedure in refusing to comply.”
9. Finally, Applicant refers the Board to the substantive submissions made in his Motion to Compel Discovery Responses which is incorporated herein by reference.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant prays that Applicant be granted leave to exceed the page limit by 22 pages in his Motion to Compel Discovery Responses mailed to the Trademark Trial and Appeal Board on July 10, 2012.

Dated: July 17, 2012

Respectfully submitted,

/joel beling/

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT IN HIS MOTION TO COMPEL DISCOVERY RESPONSES was served on all parties, this the 17th day of July, 2012, by sending the same electronically through the Electronic System for Trademark Trials and Appeals ("ESTTA") and by email, as consented to by the Registrant's Attorneys, to the following:

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ATTORNEYS FOR REGISTRANT

/s/ Joel L. Beling
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